

Message Text

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ACTION DLOS-09

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TO SECSTATE WASHDC PRIORITY 9038

C O N F I D E N T I A L SECTION 01 OF 04 GENEVA 06551

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS CONFERENCE - APRIL 27 HIGHLIGHTS

BEGIN SUMMARY: COMMITTEE I NEGOTIATING GROUPS CONTINUE DISCUSSIONS ON ARTICLE 153, FINANCIAL ARRANGEMENTS THE COMPOSITION OF THE COUNCIL AND VOTING PROCEDURES. AGREEMENT ON THE CONTINENTAL SHELF AND REVENUE SHARING IS LINKED TO THE PROGRESS IN OTHER GROUPS. U.S. POLLUTION PROPOSALS ON ARTICLE 212 HAVE SUBSTANTIALLY IMPROVED THE PROSPECT OF CONSENSUS. IN NEGOTIATING GROUP 5(NG-5) THERE IS WIDESPREAD ENDORSEMENT OF COMPULSORY CONCILIATION AS A COMPROMISE SOLUTION. END SUMMARY

1. THE NJENGA GROUP (NG-1) CONTINUED ITS DELIBERATIONS OF ARTICLE 153 ON THE REVIEW CONFERENCE.

2. GENERAL DISCUSSION OF FINANCIAL ARRANGEMENTS BETWEEN CONTRACTORS AND THE AUTHORITY CONTINUED IN THE KOH GROUP (NG-2). INDIA RESTATED ITS PROPOSAL, WHICH INCLUDED A 60
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MILLION DOLLAR FRONT-END CHARGE, A ROYALTY OF FIVE DOLLARS PER TON, A PAYMENT OF 20 PERCENT OF THE GROSS SALES PRICE OF THE METALS TO THE AUTHORITY, AND AN EXCESS PROFITS TAX. THE U.S. STATEMENT WARNED AGAINST ESTABLISHING FINANCIAL ARRANGEMENTS WHICH WOULD STIFLE INVESTMENT INCENTIVE. CANADA, NORWAY, THE SOVIET UNION, AND AUSTRALIA STATED A PREFERENCE FOR ROYALTY PAYMENTS TO THE AUTHORITY ON A

SLIDING SCALE. THE SOVIETS IN ADDITION OPTED FOR PAYMENT IN KIND.

3. THE DEVELOPED COUNTRIES SUPPORTED THE INDIAN PROPOSAL OF A 100,000 DOLLAR APPLICATION FEE AND THE DEVELOPING COUNTRIES SUPPORTED THE U.S. PROPOSAL (MADE IN A DIFFERENT CONTEXT AT THE 6TH SESSION) OF 500,000 DOLLAR FEE. KOH FOUND ATTRACTIVE A JAMAICAN PROPOSAL THAT THE AUTHORITY SHOULD HAVE THE LIMITED DISCRETION OF ESTABLISHING AN APPLICATION FEE PROPORTIONATE TO THE COST WHICH THE AUTHORITY INCURS IN PROCESSING THE APPLICATION.

4. THE EGYPTIAN GROUP OF NG-3 CONTINUED DISCUSSIONS ON COMPOSITION OF THE COUNCIL AND VOTING PROCEDURES (ARTICLE 159, PARAS 1 AND 7). THE ENGO GROUP (NG-3) (STILL NOT FORMALLY CONSTITUTED) MET FOLLOWING THE MORNING SESSION OF THE EGYPTIAN GROUP TO BEGIN DELIBERATION ON VOTING PROCEDURES. THESE DISCUSSIONS FOCUSED ON THE U.S. (AMB. RICHARDSON) PROPOSAL TO ADD AT END OF THE FIRST SENTENCE OF PARA 7 A REQUIREMENT FOR CONCURRENT MAJORITIES IN 3 OF THE FIRST 4 CATEGORIES OF PARA 1, AND ON A PROPOSAL BY TRINIDAD AND TOBAGO TO REDUCE OVERALL VOTING MAJORITY REQUIREMENT IN PARA 7 TO TWO THIRDS COUPLED WITH TWO THIRDS MAJORITY IN PARA 1 SUBPARAS (A) THROUGH (D) TAKEN AS ONE UNIT AND PARAGRAPH (E) TAKEN AS A SECOND UNIT.

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5. IN NEGOTIATING GROUP 6 (NG-6) THE IRISH FORMULA (IF) RECEIVED SUPPORT FROM PAKISTAN, THE PHILIPPINES AND MALAYSIA. THE LATTER STATED THAT IT OPPOSED THE CONCEPT OF REVENUE SHARING, BUT SINCE IT WAS AN ELEMENT OF THE PACKAGE DEAL ON THE CONTINENTAL SHELF, A DISTINCTION BETWEEN THE OBLIGATIONS OF DEVELOPING AND DEVELOPED STATES SHOULD BE MADE. THE CHAIRMAN (AGUILAR) SUMMARILY ADJOURNED THE MEETING, NOTING THAT AGREEMENT ON THE SHELF/ REVENUE SHARING ISSUE WAS OBVIOUSLY CONTINGENT ON THE OUTCOME OF NEGOTIATIONS IN OTHER GROUPS, AND PLEDGED, AT THE BEHEST OF AUSTRIA, TO UNDERTAKE PRIVATE CONSULTATIONS.

6. COMMENT: DEBATE ON THE (IF) CONTINUES WITHIN THE LL/GDS GROUP. THERE IS AN EVIDENT TREND IN FAVOR OF SUPPORT OF THE (IF) AS THE BEST OF THE PROPOSALS. ARTICLE 7B IS CLEARLY UNACCEPTABLE TO THE LL/GDS GROUP, WHILE THE NEW SOVIET SUGGESTION IS VIEWED BY SOME AS THE BASIS FOR COASTAL STATE ASSERTION OF SOVEREIGN RIGHTS OVER A 300-MILE EEZ. THE SOVIET SUGGESTION HAS, CONSEQUENTLY, ELICITED ALMOST NO SUPPORT BEYOND THE EE BLOC AND CUBA. AT THE SAME TIME, HOWEVER, THERE ARE DISAGREEMENTS AMONG THE LL/GDS ON THE ISSUE OF REVENUE SHARING. AUSTRIA (AND SOME OTHERS)

CONSIDER 7 PERCENT AS SUFFICIENT; OTHERS CONTEND THAT A HIGHER RATE IS REQUISITE TO AN OVERALL AGREEMENT. COMPLICATING THE EMERGENCE OF A UNIFIED LL/GDS POSITION ON THE QUESTION, NEPAL IS STILL LOBBYING FOR SUPPORT OF ITS PROPOSAL ON REVENUE SHARING BOTH WITHIN AND OUTSIDE THE 200-MILE ZONE. THE LL/GDS ARE CLEARLY LOOKING FOR A POSITIVE GESTURE FROM COASTAL STATES IN RESPECT TO THEIR DESIRED RIGHT OF ACCESS TO THE LIVING RESOURCES OF THE EEZ.

7. THE U.S. PROPOSALS FOR ARTICLE 212 (1) AND 212 (3) REPORTED IN SEPTEL WERE ACCEPTED BY THE VALLARTA (MEXICO) INFORMAL WORKING GROUP OF COMMITTEE III AS HAVING A "SUBSTANTIALLY IMPROVED PROSPECT OF CONSENSUS".
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8. DEBATE OVER THE U.S. PROPOSAL FOR ARTICLE 212 (6)

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ENDED IN AGREEMENT THAT A NOTICE REQUIREMENT SHOULD BE INCLUDED AS ARTICLE 212 (6). THE CHAIRMAN WILL UNDERTAKE THE DRAFTING OF THE FIRST SENTENCE OF THIS PROPOSAL FOR THE GROUPS APPROVAL.

9. THERE WAS OPPOSITION TO THE SECOND SENTENCE OF THE U.S. PROPOSAL FOR ARTICLE 212 (6) REGARDING PROTECTION AGAINST SELF INCRIMINATION. THE CHAIRMAN DEFERRED FURTHER DISCUSSION TO THE SMALLER INFORMAL WORKING GROUP.

10. CANADA PROPOSED TO TAKE UP DISCUSSION OF ARTICLE 21 (2) AND WAS MET BY STRONG PROCEDURAL OBJECTIONS FROM THE USSR, U.K., TANZANIA, GREECE AND BULGARIA. CANADA DECIDED TO WITHDRAW ITS' PROPOSAL, RESERVING THE RIGHT TO BRING THIS MATTERUP AT A LATER TIME.

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11. HAVING FAILED TO ACHIEVE AGREEMENT ON LANGUAGE FOR THE REMAINING U.S. PROPOSALS WHICH WAS ACCEPTABLE TO ALL MEMBERS OF THE G-5, THE VICE CHAIRMAN OF THE U.S. DELEGATION PRESENTED THE FOLLOWING PROPOSALS TO THE INFORMAL C-III WORKING GROUP CHAIRED BY VALLARTA.

12. ARTICLE 1 - ADD: "MARINE ENVIRONMENT" INCLUDES MARINE LIFE.

13. ARTICLE 195 - 5. THE MEASURES TAKEN IN ACCORDANCE WITH THE PRESENT PART SHALL INCLUDE THOSE NECESSARY TO PROTECT AND PRESERVE RARE OR FRAGILE AREAS AND ECOSYSTEMS AS WELL AS THE HABITAT OF DEPLETED, THREATENED, OR ENDANGERED SPECIES AND OTHER MARINE LIFE.

14. ARTICLE 213 - AMEND PARAGRAPH 1 BY CHANGING THE PERIOD AT THE END OF THE FIRST SENTENCE TO A COMMA AND ADDING THE FOLLOWING: "AND THE SAFETY OF AIR NAVIGATION."

15. ARTICLE 212, PARAGRAPHS 4 AND 5 - TO BE CONSIDERED IF ENFORCEMENT SYSTEM IS NOT IMPROVED.

16. ARTICLE 221 - PARAGRAPH 6: 1. CHANGE THE OPENING CLAUSE TO READ, "WHERE THERE IS CLEAR OBJECTIVE EVIDENCE THAT A VESSEL NAVIGATING IN THE EXCLUSIVE ECONOMIC ZONE . . ." AND DELETE THE CLAUSE "FLAGRANT OR GROSS" BEFORE "VIOLATION."

17. CONFORM THE FINAL CLAUSE TO THE FINAL CLAUSE OF PARAGRAPH 2 BY WORDING IT, "CAUSE PROCEEDINGS, INCLUDING ARREST OF THE VESSEL, TO BE TAKEN IN ACCORDANCE WITH ITS LAWS."

18. IN THE CLAUSE "RESULTING IN DISCHARGE CAUSING MAJOR
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DAMAGE OR THREAT OF MAJOR DAMAGE TO THE COASTLINE OR
RELATED INTERESTS OF THE COASTAL STATE, OR TO ANY RE-
SOURCES OF ITS TERRITORIAL SEA OR EXCLUSIVE ECONOMIC
ZONE," DELETE "MAJOR" IN BOTH PLACES AND INSERT "SIGNIFI-
CANT" BEFORE DISCHARGE.

19. ARTICLE 229 - 1. SUBSTITUTE THE CLAUSE, "COMMITTED
BY A FOREIGN VESSEL BEYOND THE EXCLUSIVE ECONOMIC ZONE
OF THE STATE INSTITUTING PROCEEDINGS. . ." FOR THE
OPENING CLAUSE "COMMITTED BY A FOREIGN VESSEL BEYOND
THE TERRITORIAL SEA OF THE STATE INSTITUTING PROCEEDINGS."

20. SUBSTITUTE THE CLAUSE "UNLESS THOSE PROCEEDINGS
RELATE TO A CASE OF SERIOUS POLLUTION AFFECTING THE
COASTAL STATE OR" FOR THE CLAUSE "UNLESS THOSE PRO-
CEEDINGS RELATE TO A CASE OF MAJOR DAMAGE TO THE COASTAL
STATE OR."

21. ARTICLE 231 - REDRAFT PARAGRAPH 1 AS FOLLOWS:

BEGIN TEXT: 1. EXCEPT FOR VIOLATIONS COMMITTED IN IN-
TERNAL WATERS OR THE TERRITORIAL SEA, PENALTIES WITH
RESPECT TO VIOLATION OF NATIONAL LAWS AND REGULATIONS, OR
APPLICABLE INTERNATIONAL RULES AND STANDARDS FOR THE PRE-
VENTION, REDUCTION AND CONTROL OF POLLUTION FROM FOREIGN
VESSELS MAY NOT INCLUDE IMPRISONMENT, IN THE ABSENCE OF
AGREEMENT TO THE CONTRARY BY THE STATES CONCERNED, OR ANY
OTHER FORM OF CORPORAL PUNISHMENT. END TEXT.

22. THE DISCUSSION COMMENCED WITH CONSIDERATION OF THE
FRENCH AND U.S. PROPOSALS REGARDING ARTICLE 231 WHICH
PRESENTLY LIMITS THE PUNISHMENTS FOR POLLUTION VIOLATIONS
BEYOND INTERNAL WATERS TO MONETARY PENALTIES. THE CON-
CEPT OF THE U.S. AND FRENCH PROPOSALS WAS SUPPORTED BY
THE FRG WHICH ALSO PROPOSED THE ADDITION OF A PHRASE
ENCOURAGING STATES TO ADOPT PENALTIES OF SUFFICIENT
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GRAVITY TO DISCOURAGE VIOLATIONS. SUPPORT WAS GIVEN
BY MORROCO, EGYPT, MADAGASCAR, TANZANIA, TURKEY,

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SOMALIA, MALAYSIA, SPAIN, IRAQ AND CANADA AND OPPOSED
BY THE USSR, UK, GREECE AND BULGARIA.

23. CUBA PROPOSED A COMPROMISE WHICH WOULD ALLOW OTHER
THAN MONETARY PENALTIES IN THE TERRITORIAL SEA IN CASES
OF SERIOUS AND WILFUL DISCHARGE WHICH WAS SUPPORTED BY
SINGAPORE.

24. NEGOTIATING GROUP 5 (NG-5) MET ON APRIL 27 TO DIS-
CUSS THE THREE PROSPECTS FOR COMPROMISE ON DISPUTE
SETTLEMENT IN THE ECONOMIC ZONE WHICH WERE OUTLINED BY
CHAIRMAN STAVROPOLOUS (GREECE) AT THE PREVIOUS MEETING:
(1) AN ABUSE OF RIGHTS PROVISION, (2) BALANCING OF
COASTAL STATE RIGHTS AGAINST ITS DUTIES TO THE INTER-
NATIONAL COMMUNITY IN THE AREA, FOR EXAMPLE, OF CONSERVA-
TION OF LIVING RESOURCES, AND (3) COMPULSORY CONCILIATION
IN SOME OR ALL DISPUTES OVER RIGHTS IN THE ECONOMIC
ZONE. TWENTY-FOUR DELEGATES MADE INTERVENTIONS. ALMOST
ALL SUPPORTED THE DESIRABILITY OF A GENERAL PROVISION
ON ABUSE OF RIGHTS ALONG THE LINES OFFERED BY MEXICO
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ON APRIL 26. HOWEVER, 12 DELEGATIONS WENT FURTHER AND

ENDORSED THE NEED FOR A JURISDICTIONAL CLAUSE MAKING AN ABUSE OF RIGHTS SUBJECT TO ADJUDICATION. IN ADDITION TO THE U.S., THESE DELATIONS WERE AUSTRIA, BAHRAIN, IRAQ, JAPAN, JORDAN, REPUBLIC OF KOREA, SINGAPORE, SWAZILAND, SWITZERLAND, AND UNITED ARAB EMIRATES. PERU, SUPPORTED BY URUGUAY, WENT SO FAR AS TO RECOMMEND THAT AN ABUSE OF RIGHTS CLAUSE MIGHT INCLUDE A PROVISION THAT STATES COULD NOT DEFAULT ON OBLIGATIONS UNDER THE CONVENTION. AS EXAMPLES OF SUCH OBLIGATIONS, PERU MENTIONED THE DETERMINATION OF MAXIMUM SUSTAINABLE YIELD AND THE ALLOCATION OF SURPLUS, WHILE URUGUAY REFERRED TO THE RIGHT OF ACCESS OF THE LL/GDS TO LIVING RESOURCES IN THE ECONOMIC ZONE.

25. FEW DELEGATIONS COMMENTED DIRECTLY ON THE SECOND PROSPECTIVE COMPROMISE. SOME OF THEM ARGUED THAT BALANCING OF COASTAL STATE RIGHTS AGAINST ITS INTERNATIONAL DUTIES WAS A MATTER WHICH SHOULD BE DEALT WITH IN THE RELEVANT SUBSTANTIVE PROVISIONS OF THE TEXT.

26. THERE WAS WIDESPREAD ENDORSEMENT OF COMPULSORY CONCILIATION AS A COMPROMISE SOLUTION. MOST NOTABLY, SEVERAL COASTAL STATES SUPPORTED IT, AT LEAST IN THE LIMITED AREA OF OVER EXPLOITATION. CHILE INDICATED A WILLINGNESS TO CONSIDER IT FOR CASES OF ABUSE OF POWER AS WELL AS FOR PROBLEMS OF CONSERVATION OF LIVING RESOURCES. EVEN ICELAND AND NORWAY SAID THEY WERE READY TO CONSIDER THIS MECHANISM AS A POSSIBLE COMPROMISE.

27. THE U.S. (SOHN) NOTED THAT ABUSE OF RIGHTS ARISES IN THE ECONOMIC ZONE BOTH WITH RESPECT TO COASTAL STATE ACTIONS AND THOSE OF OTHER STATES. ANY TEXT SHOULD REFLECT THIS. TO PROTECT AGAINST COAST ABUSE THE FOLLOW-

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ING AMENDED TEXT FOR ICNT 296(B) AND (4)(B) WAS OFFERED:

-- 1. CHANGE SUBPARAGRAPHS (3)(B) AND (4)(B):

-- (B) IN DETERMINING WHETHER THERE WAS AN ABUSE OF DISCRETION BY THE COASTAL STATE, THE COURT OR TRIBUNAL SHALL NOT SUBSTITUTE ITS DISCRETION FOR THAT OF THE COASTAL STATE.

-- 2. OMIT SUBPARAGRAPH (4) (C).

THE U.S. WOULD OF COURSE BE WILLING TO CONSIDER PARALLEL AMENDMENTS TO PROTECT COASTAL STATES FROM ABUSES BY OTHERS. ON THE SECOND ISSUE, BALANCING COASTAL STATE RIGHTS AND DUTIES, ONE MIGHT CONSIDER THAT THE COASTAL STATE AS MANKIND'S GUARDIAN OF THE RESOURCES OF ITS ZONE.

THEREFORE COASTAL STATES SHOULD BE WILLING TO ACCEPT A
PROVISION ALONG THE FOLLOWING LINES AS A NEW 296(2)(D):

28. WHEN IT IS ALLEGED THAT A COASTAL STATE OF AN OTHER
STATE HAS ACTED IN CONTRAVENTION OF SPECIFIED RULES ANY
STANDARDS CONCERNING THE CONSERVATION OF LIVING RESOURCES
(PREVENTION OF EXTINCTION OF A SPECIES, OR IRREPARABLE
HARM TO A SPECIES) ESTABLISHED BY THE PRESENT CONVENTION
OR BY A COMPETENT INTERNATIONAL ORGANIZATION OR DIPLOMATIC
CONFERENCE ACTING IN ACCORDANCE WITH THE PRESENT CON-
VENTION.

29. AS IS THE THIRD ISSUE, IT IS IMPORTANT TO NOTE THAT
THE GENERAL TERM CONCILIATION INCLUDES BOTH PROPER
CONCILIATION AND FACT-FINDING. REFERRING TO ICNT 61(5),
THE U.S. SUGGESTED THAT FACT-FINDING UNDER ARTICLE 5 OF
ANNEX VII MIGHT BE A WAY OF PROVIDING A BASIS FOR AN
AGREED SOLUTION.

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30. A SMALL DRAFTING GROUP WAS ESTABLISHED BY THE
CHAIRMAN AND FOR THE FIRST TIME THE U.S. IS PARTICIPATING
IN THAT GROUP. RICHARDSON

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